Nos. 73-556, 73-795

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

FLORIDA POWER & LIGHT COMPANY, *Petitioner*

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 641, ET AL., *Respondents*

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL., *Respondents*

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE GRAPHIC ARTS UNION EMPLOYERS OF AMERICA, A DIVISION OF THE PRINTING INDUSTRIES OF AMERICA, INC., AS AMICUS CURIAE

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Press of Byron S. Adams Printing, Inc., Washington, D. C.

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This brief on behalf of the Graphic Arts Union Employers of America, a division of Printing Industries of America, Inc., as *amicus curiae,* is filed pursuant to written consent of the parties under Rule

42(2) of the Court. It is in support of the position of the National Labor Relations Board (herein called the Board) that Section 8(b)(1)(B) of the National Labor Relations Act, as amended (herein called the Act), was violated by the disciplinary actions imposed by the unions involved here against foremen and other supervisors who performed work during a strike, and urges reversal of the decision of the court below which denied enforcement of the Board's orders.

I. THE INTEREST OF THE AMICUS CURIAE

The Graphic Arts Union Employers of America (GAUEA), a division of Printing Industries of America, Inc., is a national association representing approximately 3,500 printing companies throughout the country. Its membership is comprised of unionized companies in the commercial printing industry, which employ almost 250,000 unionized workers. Although there are some large printing corporations which employ substantial numbers of unionized employees, the industry is characterized by a vast number of small and medium sized companies whose employment ranges from only 3 or 4 employees to 25-50 employees. Over 80 percent of the firms in the industry employ 25 employees or fewer.

Almost all of the companies which are members of GAUEA are affiliated with local trade associations which are subordinate bodies of Printing Industries of America, Inc. Collective bargaining in metropolitan areas is generally conducted on a multi-employer basis through the local association or its union employers division. There are also many collective bargaining agreements negotiated by individual firms which may be located outside of a metropolitan area served by a

local association or which may be within such an area but as a matter of preference desire to negotiate on their own.

Each of the companies which are members of GAUEA negotiates with one or more of the labor unions traditionally associated with the printing industry. These include locals or affiliates of such unions as the International Typographical Union, International Printing Pressmen and Assistants Union, Graphic Arts International Union (which as a result of a merger combines the Lithographers and Photoengravers International Union and International Brotherhood of Bookbinders), and others. Since each of these unions has traditionally been associated with a particular printing craft, it is not at all uncommon for even a small plant to bargain with as many as three or four different unions.

The direct and immediate interest of the *amicus* herein lies in the fact that it is common in the industry for collective bargaining agreements to require foremen or other supervisors to be union members, though the union may not bargain on their behalf. Even in the absence of such contractual requirements, foremen or other supervisors who have been promoted from bargaining unit status will frequently maintain their union membership. Particularly in recent years, the printing unions have been extremely militant in invoking internal fines or expulsion procedures against foremen and other supervisors who by their interpretations of a labor agreement, their assignments of work, or their own performance of work (including work during a strike), have acted in their employer's interest in a manner adverse to the union's position.

Indeed, a substantial number of the cases in recent years in which unions have been held to have violated Section 8(b)(1)(B) have involved firms in the commercial printing industry or newspapers which, though not part of the commercial printing industry, are subject to labor contracts with the same unions. Several of the cases before the Board and the appellate courts, which have presented the very issue now before this Court of a union's right to fine or expel a supervisor for performing work during a strike, have involved printing unions and commercial printers or newspapers, *e.g.*, *N.L.R.B.* v. *Toledo Locals Nos. 15-P and 272, LPIU, AFL-CIO (Toledo Blade Co.)*, 437 F.2d 55 (CA 6, 1971); *N.L.R.B.* v. *San Francisco Typographical Union No. 21, ITU, AFL-CIO (California Newspapers, Inc.)*,——F.2d——, 83 LRRM 2314 (CA 9, 1973); *Milwaukee Printing Pressmen & Assistants Union No. 7, IPP & AU (North Shore Publishing Co.)*, 192 NLRB 914 (1971); *Local 261, Lithographers and Photoengravers Union, AFL-CIO (Manhardt-Alexander, Inc.)*, 195 NLRB 408 (1972).

GAUEA is seriously concerned over the rule pronounced by the court below which would permit unions to exercise control over work performed by management representatives during a strike through the imposition of internal union discipline. The decision of that court, if permitted to stand, would seriously compromise the loyalty expected by employers of their supervisory personnel. Moreover, by effectively depriving the employer of his opportunity to counteract a strike by maintaining production through the use of supervisory personnel, that court's interpretation of the statute would substantially increase the bargaining strength of unions by sacrificing tradi-

tional rights of the employer. The decision of the court below, in the view of GAUEA, is unsound as a matter of statutory interpretation and detrimental as a matter of national labor policy.

II. SUMMARY OF ARGUMENT

Section 8(b)(1)(B) makes it unlawful for a union to restrain or coerce "an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances." It has been uniformly accepted by the Labor Board and the courts that that section not only reaches union restraint or coercion designed to force the employer to change such representatives, but also bars such conduct where designed to cause the employer's representative to adopt an attitude more amenable to the union's wishes.

In cases where a supervisor has retained his union membership, either because he is required to do so by the terms of a collective bargaining agreement or for reasons of personal preference, unions have undertaken such restraint or coercion through the device of imposing fines upon the offending supervisor or have expelled him. The vice in such a procedure, as the Board has properly concluded, is that such actions are designed to change the supervisors from "persons representing the viewpoint of management to persons responsive or subservient to [the union's] will." *San Francisco-Oakland Mailers' Union No. 18, ITU,* 172 NLRB 2173 (1968).

The court below does not take issue with the basic proposition that union restraint or coercion designed to change the attitudes of employer representatives involved in collective bargaining or grievance adjustment constitutes a violation of Section 8(b)(1)(B), or

that union-imposed fines or expulsion can constitute such restraint or coercion. Rather, it has adopted the premise that the fines and expulsions involved here, against supervisors who performed what the court characterized as "rank-and-file" work during a strike, are not barred by Section 8(b)(1)(B) because the supervisors were not engaged at that time as employer "representatives for the purpose of collective bargaining or the adjustment of grievances."

In our view the court below reached an erroneous result because it both misconstrued the nature of the work of the supervisors and the purposes for which it was performed, and failed to grasp the coercive impact of the union's discipline upon the supervisors in the performance of their duties on behalf of the employer in the future. At bottom, the court took an improperly restrictive view of the employer interests protected by Section 8(b)(1)(B).

Presumably if the court had believed that the performance of work by supervisors during a strike which would ordinarily have been performed by rank-and-file employees was undertaken for "the purposes of collective bargaining," it would have agreed with the Board that the statute had been violated. What it failed to recognize was that just as a strike is "part and parcel of the process of collective bargaining," *N.L.R.B.* v. *Insurance Agents' International Union, AFL-CIO,* 361 U.S. 477, 495 (1960), so are employer efforts to diminish the impact of the strike by maintaining production and thereby improving its bargaining position.

The particular tasks that the supervisor happens to perform during a strike are irrelevant, for the con-

cept of "rank-and-file" work has meaning only with respect to the division of labor when both supervisory and non-supervisory personnel are working. The salient point is that the supervisor, as a member of the management team upon which management is entitled to rely, is called upon to perform whatever work is expected of him by the employer during a strike with a purpose of enhancing the employer's position in bargaining negotiations by dramatizing the minimal impact of a strike upon the employer's business. In a very real sense, the supervisor who works during a strike—particularly one who helps maintain production operations—is the counterpart of the employer representative at the bargaining table who underscores the employer's resistance to a union demand by asserting that even a strike will not cause the employer to change his position. The employer representative at the bargaining table has orally communicated the employer's position to the union; the supervisor working during the strike has translated talk into action.

But even if the court below were correct in its view that the work of a supervisor during a strike does not make him the employer's representative for the purposes of collective bargaining, union discipline against such supervisors nonetheless constitutes illegal restraint or coercion in violation of Section 8(b)(1)(B). The Board has correctly recognized that the purpose of that section of the Act is to prevent the union from driving a wedge between the supervisor and his employer which would interfere with the supervisor's effective performance of his duties on behalf of the employer, for the fear of such disciplinary action would tend to inhibit supervisors from vigorously asserting themselves in their employer's

interest. Thus the Board has properly taken the position that "when the underlying dispute is between the employer and the union rather than between the union and the supervisor, then the union is precluded in taking disciplinary action by Section 8(b)(1)(B)," *Local 2150, IBEW (Wisconsin Electric Power Co.)*, 192 NLRB 77, 78 (1971), *enf'd*, 486 F.2d 602 (CA 7, 1973). The Board's rationale is a sound one, in keeping with the purposes of Section 8(b)(1)(B), and mandates the illegality of the union actions here.

Although the court below professed to find support for its view in this Court's *Allis-Chalmers* decision,[1] that decision is wholly inapplicable to the case at bar, for the subsection of the Act involved in that proceeding was designed to safeguard interests which are wholly different from those protected by the subsection involved here.

The *Allis-Chalmers* decision, which upheld the right of a union to fine or expel employee-members who worked during a strike, involved the construction of Section 8(b)(1)(A) of the Act. That section makes it unlawful for a union to restrain or coerce "employees in the exercise of rights guaranteed in Section 7," and thus by its own terms is made inapplicable to supervisors. The rationale underlying the decision in that case was expressed in this Court's statement, 388 U.S. at 181, that "The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and 'the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent.' "

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[1] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967).

The role of the supervisor in the statutory scheme, even one who holds union membership, is scarcely to enhance the union's power as "an effective bargaining agent." Indeed, particularly insofar as a strike reflects the polarization of union and management positions, the supervisor's role as a representative of management is to reflect management's opposition to union demands. Accordingly, inasmuch as Section 8 (b)(1)(A) reflects a statutory policy which would permit a degree of restraint or coercion by a union over its membership for the purpose of bargaining more effectively, it can have no bearing upon a competing section of the statute designed to draw the line between a union's effective representation of employees and a union's control over representatives of the employer.

III. ARGUMENT

A. UNION DISCIPLINARY ACTION DESIGNED TO INDUCE PRO-UNION POSITIONS ON THE PART OF SUPERVISORY PERSONNEL IS VIOLATIVE OF SECTION 8(b)(1)(B)

1. Section 8(b)(1)(B) Bars Union Discipline Against Supervisors Who, by Performing Work During a Strike, Are Engaged as Representatives of the Employer for Purposes of Collective Bargaining

Section 8(b)(1)(B) makes it unlawful for a union to restrain or coerce "an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." This section of the Act has been uniformly and properly construed by the Board and the courts to prevent union disciplinary efforts designed not only to force the removal and replacement of a supervisor whom the union finds offensive, but also bars union efforts to dictate the manner in which the supervisor performs

his duties on behalf of the employer. This rationale was articulated by the Board in *San Francisco-Oakland Mailers' Union No. 18, ITU,* 172 NLRB 2173 (1968):

> "[Union disciplinary actions] were designed to change the [employer's] representatives from persons representing the viewpoint of management to persons responsive or subservient to [the union's] will . . . .
>
> That Respondent may have sought the substitution of attitudes rather than persons . . . cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the Charging Party's control over its representatives. Realistically, the Employer would have to replace its foremen or face *de facto* nonrepresentation by them."

As the Court of Appeals for the Seventh Circuit has recognized, *N.L.R.B.* v. *Local 2150, IBEW (Wisconsin Electric Power Company),* 486 F.2d 602, 607 (CA 7, 1973), "We agree that an employer's right to select those representatives whom he chooses would be worthless if the Union could accomplish the functional equivalent of restraining or coercing him in that selection by applying pressure upon those whom the employer has already selected so as to compromise their loyalty." That proposition has been approved by the court below not only in the case at bar, but prior cases as well, *Dallas Mailers Union, Local 143* v. *N.L.R.B.,* 445 F.2d 730 (1971), *Meat Cutters Union Local 81, AMC&BW, AFL-CIO* v. *N.L.R.B.,* 458 F.2d 794 (1972).

Consistent with that rationale, unlawful restraint or coercion violative of Section 8(b)(1)(B) has been

found where the union has imposed disciplinary sanctions through fines or expulsion against supervisors for actions within the scope of their supervisory or managerial responsibilities. For the most part, these cases in recent years have involved union efforts to fine or expel supervisors whose interpretations of the collective bargaining agreement, or assignments of work, or performance of work that the union deemed reserved to bargaining unit personnel, were at odds with the union's view. But not all. The court below has recognized, for example, that Section 8(b)(1)(B) bars union discipline against supervisors not only for their role in grievance adjustment or collective bargaining, but also for performance of other duties as a management representative. See *Meat Cutters Union Local 81, AMC&BW, AFL-CIO* v. *N.L.R.B., supra,* where it enforced a Board order against a union which disciplined a supervisor for his managerial decision to implement a new Company meat procurement policy. The court below likewise noted its approval of a decision by the Court of Appeals for the Tenth Circuit, *N.L.R.B.* v. *New Mexico District Council of Carpenters,* 454 F.2d 1116 (1972), barring union discipline against a supervisor who exhorted employees to vote against a union during an organizing drive, in performance of his collective bargaining function.

In the case at bar, however, the court below has taken an unduly restrictive view of the statutory reference in Section 8(b)(1)(B) to "the purposes of collective bargaining" and hence has concluded erroneously that that section of the Act fails to reach union discipline against supervisors who perform work for their employer during a strike. Its decision

rests primarily on the erroneous premise that the role of a supervisor who performs work during a strike is "totally unrelated" to the collective bargaining process. To the contrary, if a strike called by a union is "part and parcel of the *process* of collective bargaining," as this Court has recognized,[2] then discipline imposed by a union against supervisors who counter the damaging effects of a strike by performing work at the behest of their employer serves to restrain or coerce that employer in the "selection of his representative for the *purposes* of collective bargaining." (Emphasis added.)

Indeed, it is at the time of a strike called by the union that the stakes involved in the collective bargaining process are usually at the highest—for the issues have become vital enough and the positions of the parties sufficiently polarized as to warrant a disruption of production and loss of earnings—and hence the employer's capacity to withstand the strike by continuing production can have enormous impact on the nature of the bargain that will ultimately result. The employer's ability to rely upon his representatives—his supervisory force—to maintain production despite the withdrawal to the picket lines of the rank-and-file employees is thus vitally related to the purposes of collective bargaining. If his representatives remain steadfast in their loyalty to him, the employer may well generate sufficient counter-pressures upon the union to moderate the terms of settlement.

To suggest, as the court below did, that supervisors who during a strike perform work ordinarily per-

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[2] *N.L.R.B.* v. *Insurance Agents' International Union*, 361 U.S. 477, 495 (1960).

formed by rank-and-file employees are not acting as management's representatives, misses the basic point that the employer has enlisted the aid of his management team in an effort to enhance his bargaining position. The inference is compelling that the threat of union discipline against a supervisor which would prevent him from coming to the employer's aid must restrain or coerce the employer in the selection of his representatives for the purposes of collective bargaining.

There is no doubt that if the union attempted to dictate, by similar pressures, the employer's selection of a pliable supervisor or industrial relations director as the employer's representative at the bargaining table, a violation of Section 8(b)(1)(B) would be plainly established. The thrust of the objection to such conduct, of course, is that it deprives the employer of a member of his management team—upon whom the employer should be expected to rely—who in the interest of the employer would press for concessions from the union or otherwise persuade the union of the weakness of its case. The supervisor who works during a strike is providing much the same function with precisely the same objective. He serves as the counterpart of the employer's representative at the bargaining table who forcefully tells the union that even a strike over an issue deemed vital to the employer will not bring the employer to its knees. By working, he underscores the point made at the bargaining table.

The emphasis placed by the majority in the court below on the supervisor's performance of supposedly rank-and-file work fails to come to grips with the

realities of a strike. The performance during a strike of work normally performed by non-supervisory employees would seemingly have more of an impact upon bargaining negotiations than work of any other kind in that it would impress upon the union and its membership that their withholding of services has not brought about the anticipated cessation of operations. The salient factor, however, is that the concept of rank-and-file work has meaning only in terms of a division of labor where both supervisors and non-supervisory employees are working, and is meaningless in the event of a strike. What is significant where a strike has occurred is that all work performed by supervisors is in keeping with their position as representatives of management acting in the furtherance of management's interests and management's bargaining position.

2. Section 8(b)(1)(B) Bars Union Discipline Against Supervisors Who Are Acting in the Interest of Their Employer

Union discipline of a supervisor is prohibited by Section 8(b)(1)(B) when the underlying dispute is between the employer and the union. The Board has noted that if the right given the employer to "select" his representative is to be protected in meaningful fashion, he must be free "to make and rely upon a selection of representatives from an uncoerced group of such supervisors whose loyalty to him has not been prejudiced . . . ." *Toledo Locals Nos. 15-P and 272, LPIU (The Toledo Blade Co., Inc.)*, 175 NLRB 1072 (1969), *enf'd*, 437 F.2d 55 (CA 6, 1971). The employer's right to the undivided loyalty of his representatives is unlawfully compromised if the union can hold the supervisor hostage by threats of fine or expulsion when he acts in the interest of the employer.

The Board has forcefully stated its position in *Local Union No. 2150, IBEW (Wisconsin Electric Power Co.)*, 192 *NLRB* 77, 78:

> "The intent [of Section 8(b)(1)(B)] is to prevent the supervisor from being placed in a position where he must decide either to support his employer and thereby risk internal union discipline or support the union and thereby jeopardize his position with the employer. To place the supervisor in such a position casts doubt both upon his loyalty to his employer and upon his effectiveness as the employer's collective-bargaining and grievance adjustment representative. The purpose of Section 8(b)(1)(B) is to assure to the employer that its selected collective bargaining representatives will be completely faithful to its desires. This cannot be achieved if the union has an effective method, union disciplinary action, by which it can pressure such representatives to deviate from the interests of the employer. Accordingly, we find that Section 8(b)(1)(B) has been violated."

It is this driving of a wedge between the supervisor and his employer through internal union discipline that the section is designed to prevent, for the fear of disciplinary action is likely to impede—indeed is designed to impede—the supervisor's effectiveness then and thereafter in representing the employer's interests. The court below expressed its awareness of this danger in *Meat Cutters Union Local 81 AMC&BW, AFL-CIO* v. *N.L.R.B., supra,* 458 F.2d at 799, by observing that if the union's discipline were permitted to stand "there would have been serious doubt thereafter as to whether [the supervisor] could represent the Company in a *bona fide* manner against the Union in other matters where their interests were adverse."

The Sixth Circuit in *N.L.R.B.* v. *Toledo Locals Nos. 15-P and 272, LPIU, AFL-CIO (Toledo Blade Co., Inc.),* 437 F.2d 55, 57 (1971), was equally sensitive to this point, noting that "[t]his conduct of the union would further operate to make the employees reluctant in the future to take a position adverse to the union, and their usefulness to the employer would thereby be impaired."

The thrust of these decisions is that the imposition of union discipline against supervisors for actions undertaken in furtherance of management's interests will tend to coerce such supervisors not only with respect to their actions in the immediate dispute but in the performance of their future managerial duties. Hence the rule pronounced by the Board, that union disciplinary action imposed against supervisors is unlawful whenever the dispute can be characterized as a dispute between the employer and the union rather than between the union and its members, is a sound one and is in keeping with the statutory purposes.

It appears that the court below would have held the union's discipline to be unlawful had it believed that the supervisors were engaged in a managerial capacity while performing work during a strike which was ordinarily performed by rank-and-file employees. Indeed, its decision in *Meat Cutters Union Local 81, supra,* would have dictated such a holding. However, it flatly rejected the Board's contention that such work during a strike was in fact managerial in nature, and stated,——F.2d at——, 83 LRRM at 2591, "The dividing line between supervisory and non-supervisory work in the present context is sharply defined and easily understood." Based upon this inaccurate premise, it erroneously concluded that "There is ac-

cordingly no reason to believe that . . . a supervisor will suffer from a change in attitude when, after the strike, he returns to the performance of his normal supervisory duties."

To the contrary, there is no reason to believe that the supervisor performing whatever work he can in accordance with his employer's instructions will share the court's view of this "sharply defined and easily understood" line. Nor does the Court of Appeals for the Seventh Circuit, which observed, *N.L.R.B.* v. *Local 2150, IBEW, AFL-CIO (Wisconsin Electric Power Company)*, 486 F.2d 602, 608, "What a supervisor's proper functions are when the full complement of employees is at work under the regime of a collective bargaining agreement then in force is not determinative of supervisory responsibility during a strike."

The particular kind of work a supervisor performs during a strike can have no bearing on the legality of union disciplinary action, for all of it is managerial in nature. As the Court of Appeals for the Seventh Circuit pointed out in *N.L.R.B.* v. *Local 2150, IBEW*, *supra*, 486 F.2d at 608:

> "Insofar as their effort helps to keep the business going in order to fulfill commitments to customers and to preserve the company's clientele and good name from deterioration, it lies at the very core of the entrepreneurial function . . . . Accordingly, we think supervisors who act in their employer's interests by performing rank-and-file work during a strike are indeed performing a properly managerial function."

Hence union disciplinary action does have a lasting impact in compromising the supervisor's effectiveness

and loyalty as the employer's representative. The court below has improperly and erroneously substituted its judgment for that of the agency entrusted with administration of a basic labor law with respect to inferences of fact within the special competence of the Labor Board. *Radio Officers Union* v. *N.L.R.B.*, 347 U.S. 17, 48-50 (1954); *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 488, 490 (1951).

B. THIS COURT'S RATIONALE IN ALLIS-CHALMERS DOES NOT SUPPORT THE UNION ACTIONS INVOLVED HERE

Although the court below purported to find support for its decision in this Court's ruling in *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), neither this Court's holding nor its rationale of decision lends support to the view of the court below. *Allis-Chalmers*, of course, involved the construction of Section 8(b)(1)(A) of the Act,[3] not Section 8(b)(1)(B) as here.

Section 8(b)(1)(A) reflects an attempt by Congress to strike a balance between the protection of the rights of *employees* under Section 7—rights which include self-organization, collective bargaining, and other concerted activity, as well as the right to refrain from such activities—and, by its proviso, the safeguarding of the rights of a union to govern its own affairs. This Court, noting that national labor policy was built on the premise that by pooling their economic strength and bargaining through a labor organization employees "have the most effective means of bargaining

[3] Section 8(b)(1)(A) makes it unlawful for a union to restrain or coerce "employees in the exercise of the rights guaranteed in Section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ."

for improvements in wages, hours and working conditions," stressed that such a policy "extinguishes the individual employee's power *to order his own relations with his employer* and creates a power vested in the chosen representative to act in the interests of all employees," 388 U.S. at 180. (Emphasis supplied.) The result, as this Court noted, is that "the employee may disagree with many of the union decisions but is bound by them."

It is this recognition of the fact that the individual employee has given up rights that in the absence of representation by a union he might otherwise have so that he might obtain the benefits of collective bargaining, that in our view lies at the core of this Court's decision in *Allis-Chalmers.* The Court, focusing on the union's role as bargaining agent for employees, stated, 388 U.S. at 181, "The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent.' "

Thus, the restraints that a union may be permitted to impose upon its employee-members in cases where such control enhances its capacity to act effectively as their statutory bargaining representative stand on a far different footing than obligations imposed by a union upon supervisor-members who serve the employer's interest.[4] Obviously the union would be an

[4] The Act expressly provides in Section 2(3) that a supervisor is not an "employee" within the meaning of the Act, and underscores that declaration in Section 14(a), which makes explicit that an employer cannot be compelled to treat supervisors as employees for purposes of collective bargaining. The employer's right to the undivided loyalty of his supervisors was the basis for

even more effective bargaining agent for the employees it represents if it could compel the employer to choose as his representatives at the bargaining table persons who would comply with the union's dictates. But that is precisely the evil that Section 8(b)(1)(B) was designed to prevent. The statutory policy underlying Section 8(b)(1)(A) which permits a degree of restraint or coercion over employee-members in order to enable the union to function more effectively as bargaining agent is matched by the countervailing statutory policy of Section 8(b)(1)(B) which prohibits *any* degree of restraint or coercion where employer interests are at stake. Hence this Court's rationale of decision in *Allis-Chalmers* can have no bearing whatsoever here.

What is clear, moreover, is that a union disciplinary rule against members can be enforced only to the extent that it "reflects a legitimate union interest [and] impairs no policy Congress has imbedded in the labor laws," *Scofield* v. *N.L.R.B.*, 394 U.S. 423, 430 (1969). Inasmuch as Sections 2(3), 14(a), and 8(b)(1)(B) are

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the incorporation of Section 2(3) and 14(a) into the Act. The rationale of Congress was aptly summed up by Senator Taft, a prime architect of the statute, when he stated:

> "It is felt very strongly by management that foremen are part of management; that it is impossible to manage a plant unless the foremen are wholly loyal to the management. We tried various in-between steps, but the general conclusion was that they must either be a part of management or a part of the employees . . . .
>
> The committee felt that foremen either had to be a part of management and not have any rights under the Wagner Act, or be treated entirely as employees, and it was felt that the latter course would result in the complete disruption of discipline and productivity in the factories of the United States." 93 Cong. Rec. 3952 (1947), II Legis. Hist. at 1008-1009.

The same considerations underlie Section 8(b)(1)(B) as well.

designed to assure the undivided loyalty of supervisors to their employer—without restraint or coercion from unions—union attempts to impose internal discipline upon supervisory personnel for their efforts during a strike violate national labor policy and cannot be permitted to stand.

IV. CONCLUSION

For the foregoing reasons, Graphic Arts Union Employers of America respectfully urges this Court to reverse the decision of the court below in both cases and decree enforcement of the Board's orders.

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